

By: Howard

H.B. No. 628

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the distribution, possession, purchase, consumption,
3 and receipt of cigarettes, e-cigarettes, and tobacco products;
4 providing penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 161.081, Health and Safety Code, is
7 amended by adding Subdivision (1-b) to read as follows:

8 (1-b) "Minor" means a person under 21 years of age.

9 SECTION 2. The heading to Section 161.082, Health and
10 Safety Code, is amended to read as follows:

11 Sec. 161.082. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO
12 PRODUCTS TO PERSONS YOUNGER THAN 21 [~~18~~] YEARS OF AGE PROHIBITED;
13 PROOF OF AGE REQUIRED.

14 SECTION 3. Sections 161.082(a) and (e), Health and Safety
15 Code, are amended to read as follows:

16 (a) A person commits an offense if the person, with criminal
17 negligence:

18 (1) sells, gives, or causes to be sold or given a
19 cigarette, e-cigarette, or tobacco product to someone who is
20 younger than 21 [~~18~~] years of age; or

21 (2) sells, gives, or causes to be sold or given a
22 cigarette, e-cigarette, or tobacco product to another person who
23 intends to deliver it to someone who is younger than 21 [~~18~~] years
24 of age.

1 (e) A proof of identification satisfies the requirements of
2 Subsection (d) if it contains a physical description and photograph
3 consistent with the person's appearance, purports to establish that
4 the person is 21 [~~18~~] years of age or older, and was issued by a
5 governmental agency. The proof of identification may include a
6 driver's license issued by this state or another state, a passport,
7 or an identification card issued by a state or the federal
8 government.

9 SECTION 4. The heading to Section 161.083, Health and
10 Safety Code, is amended to read as follows:

11 Sec. 161.083. SALE OF CIGARETTES, E-CIGARETTES, OR TOBACCO
12 PRODUCTS TO PERSONS YOUNGER THAN 30 [~~27~~] YEARS OF AGE.

13 SECTION 5. Sections 161.083(a) and (a-1), Health and Safety
14 Code, are amended to read as follows:

15 (a) A [~~Pursuant to federal regulation under 21 C.F.R.~~
16 ~~Section 1140.14(b), a~~] person may not sell, give, or cause to be
17 sold or given a cigarette or tobacco product to someone who is
18 younger than 30 [~~27~~] years of age unless the person to whom the
19 cigarette or tobacco product was sold or given presents an
20 apparently valid proof of identification.

21 (a-1) A person may not sell, give, or cause to be sold or
22 given an e-cigarette to someone who is younger than 30 [~~27~~] years of
23 age unless the person to whom the e-cigarette was sold or given
24 presents an apparently valid proof of identification.

25 SECTION 6. Section 161.084(b), Health and Safety Code, is
26 amended to read as follows:

27 (b) The sign must include the statement:

1 PURCHASING OR ATTEMPTING TO PURCHASE E-CIGARETTES OR TOBACCO
2 PRODUCTS BY A MINOR UNDER 21 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW.
3 SALE OR PROVISION OF E-CIGARETTES OR TOBACCO PRODUCTS TO A MINOR
4 UNDER 21 [~~18~~] YEARS OF AGE IS PROHIBITED BY LAW. UPON CONVICTION, A
5 CLASS C MISDEMEANOR, INCLUDING A FINE OF UP TO \$500, MAY BE IMPOSED.
6 VIOLATIONS MAY BE REPORTED TO THE TEXAS COMPTROLLER'S OFFICE BY
7 CALLING (insert toll-free telephone number). PREGNANT WOMEN SHOULD
8 NOT SMOKE. SMOKERS ARE MORE LIKELY TO HAVE BABIES WHO ARE BORN
9 PREMATURE OR WITH LOW BIRTH WEIGHT.

10 SECTION 7. Sections [161.085](#)(a) and (b), Health and Safety
11 Code, are amended to read as follows:

12 (a) Each retailer shall notify each individual employed by
13 that retailer who is to be engaged in retail sales of cigarettes,
14 e-cigarettes, or tobacco products that state law:

15 (1) prohibits the sale or distribution of cigarettes,
16 e-cigarettes, or tobacco products to any person who is younger than
17 21 [~~18~~] years of age as provided by Section [161.082](#) and that a
18 violation of that section is a Class C misdemeanor; and

19 (2) requires each person who sells cigarettes,
20 e-cigarettes, or tobacco products at retail or by vending machine
21 to post a warning notice as provided by Section [161.084](#), requires
22 each employee to ensure that the appropriate sign is always
23 properly displayed while that employee is exercising the employee's
24 duties, and provides that a violation of Section [161.084](#) is a Class
25 C misdemeanor.

26 (b) The notice required by this section [~~Subsection (a)~~]
27 must be provided within 72 hours of the date an individual begins to

1 engage in retail sales of cigarettes, e-cigarettes, or tobacco
2 products. The individual shall signify that the individual has
3 received the notice required by this section [~~Subsection (a)~~] by
4 signing a form stating that the law has been fully explained, that
5 the individual understands the law, and that the individual, as a
6 condition of employment, agrees to comply with the law.

7 SECTION 8. Section 161.086(b), Health and Safety Code, is
8 amended to read as follows:

9 (b) Subsection (a) does not apply to:

10 (1) a facility or business that is not open to persons
11 younger than 21 [~~18~~] years of age at any time;

12 (2) that part of a facility or business that is a
13 humidor or other enclosure designed to store cigars in a
14 climate-controlled environment; or

15 (3) a premises for which a person holds a package store
16 permit issued under the Alcoholic Beverage Code.

17 SECTION 9. Sections 161.087(a) and (b), Health and Safety
18 Code, are amended to read as follows:

19 (a) A person may not distribute to persons younger than 21
20 [~~18~~] years of age:

21 (1) a free sample of a cigarette, e-cigarette, or
22 tobacco product; or

23 (2) a coupon or other item that the recipient may use
24 to receive a free or discounted cigarette, e-cigarette, or tobacco
25 product or a sample cigarette, e-cigarette, or tobacco product.

26 (b) Except as provided by Subsection (c), a person,
27 including a permit holder, may not accept or redeem, offer to accept

1 or redeem, or hire a person to accept or redeem a coupon or other
2 item that the recipient may use to receive a free or discounted
3 cigarette, e-cigarette, or tobacco product or a sample cigarette,
4 e-cigarette, or tobacco product if the recipient is younger than 21
5 [~~18~~] years of age. A coupon or other item that such a recipient may
6 use to receive a free or discounted cigarette, e-cigarette, or
7 tobacco product or a sample cigarette, e-cigarette, or tobacco
8 product may not be redeemable through mail or courier delivery.

9 SECTION 10. Sections [161.088](#)(b) and (d), Health and Safety
10 Code, are amended to read as follows:

11 (b) The comptroller may make block grants to counties and
12 municipalities to be used by local law enforcement agencies to
13 enforce this subchapter and Subchapter R in a manner that can
14 reasonably be expected to reduce the extent to which cigarettes,
15 e-cigarettes, and tobacco products are sold or distributed,
16 including by delivery sale, to persons who are younger than 21
17 [~~18~~] years of age. At least annually, random unannounced
18 inspections shall be conducted at various locations where
19 cigarettes, e-cigarettes, and tobacco products are sold or
20 distributed, including by delivery sale, to ensure compliance with
21 this subchapter and Subchapter R. The comptroller shall rely, to
22 the fullest extent possible, on local law enforcement agencies to
23 enforce this subchapter and Subchapter R.

24 (d) The use of a person younger than 21 [~~18~~] years of age to
25 act as a minor decoy to test compliance with this subchapter and
26 Subchapter R shall be conducted in a fashion that promotes
27 fairness. A person may be enlisted by the comptroller or a local

1 law enforcement agency to act as a minor decoy only if the following
2 requirements are met:

3 (1) written parental consent is obtained for the use
4 of a person younger than 18 years of age to act as a minor decoy to
5 test compliance with this subchapter and Subchapter R;

6 (2) at the time of the inspection, order, or delivery,
7 the minor decoy is younger than 20 [~~17~~] years of age;

8 (3) the minor decoy has an appearance that would cause
9 a reasonably prudent seller of cigarettes, e-cigarettes, or tobacco
10 products to request identification and proof of age;

11 (4) the minor decoy carries either the minor's own
12 identification showing the minor's correct date of birth or carries
13 no identification, and a minor decoy who carries identification
14 presents it on request to any seller of or any person who delivers
15 cigarettes, e-cigarettes, or tobacco products; and

16 (5) the minor decoy answers truthfully any questions
17 about the minor's age at the time of the inspection, order, or
18 delivery.

19 SECTION 11. Section [161.251](#), Health and Safety Code, is
20 amended by adding Subdivision (1-b) to read as follows:

21 (1-b) "Minor" means a person under 21 years of age.

22 SECTION 12. Sections [161.252](#)(a), (b), and (c), Health and
23 Safety Code, are amended to read as follows:

24 (a) An individual who is younger than 21 [~~18~~] years of age
25 commits an offense if the individual:

26 (1) possesses, purchases, consumes, or accepts a
27 cigarette, e-cigarette, or tobacco product; or

1 (2) falsely represents himself or herself to be 21
2 ~~[18]~~ years of age or older by displaying proof of age that is false,
3 fraudulent, or not actually proof of the individual's own age in
4 order to obtain possession of, purchase, or receive a cigarette,
5 e-cigarette, or tobacco product.

6 (b) It is an exception to the application of this section
7 that the individual younger than 21 ~~[18]~~ years of age possessed the
8 cigarette, e-cigarette, or tobacco product in the presence of:

9 (1) an adult parent, a guardian, or a spouse of the
10 individual; or

11 (2) an employer of the individual, if possession or
12 receipt of the e-cigarette or tobacco product is required in the
13 performance of the employee's duties as an employee.

14 (c) It is an exception to the application of this section
15 that the individual younger than 21 ~~[18]~~ years of age is
16 participating in an inspection or test of compliance in accordance
17 with Section [161.088](#).

18 SECTION 13. Section [161.452](#)(b), Health and Safety Code, is
19 amended to read as follows:

20 (b) A person taking a delivery sale order of cigarettes
21 shall comply with:

22 (1) the age verification requirements prescribed by
23 Section [161.453](#);

24 (2) the disclosure requirements prescribed by Section
25 [161.454](#);

26 (3) ~~[the shipping requirements prescribed by Section~~
27 [161.455](#),

1 ~~[(4)]~~ the registration and reporting requirements
2 prescribed by Section 161.456;

3 (4) ~~[(5)]~~ the tax collection requirements prescribed
4 by Section 161.457; and

5 (5) ~~[(6)]~~ each law of this state that generally
6 applies to sales of cigarettes that occur entirely within this
7 state, including a law:

8 (A) imposing a tax; or

9 (B) prescribing a permitting or tax-stamping
10 requirement.

11 SECTION 14. Section 161.453(a), Health and Safety Code, is
12 amended to read as follows:

13 (a) A person may not mail or ship cigarettes in connection
14 with a delivery sale order unless before mailing or shipping the
15 cigarettes the person accepting the delivery sale order first:

16 (1) obtains from the prospective customer a
17 certification that includes:

18 (A) reliable confirmation that the purchaser is
19 at least 21 ~~[18]~~ years of age; and

20 (B) a statement signed by the prospective
21 purchaser in writing and under penalty of law:

22 (i) certifying the prospective purchaser's
23 address and date of birth;

24 (ii) confirming that the prospective
25 purchaser understands that signing another person's name to the
26 certification is illegal, that sales of cigarettes to an individual
27 under the age prescribed by Section 161.082 are illegal under state

1 law, and that the purchase of cigarettes by an individual under that
2 age is illegal under state law; and

3 (iii) confirming that the prospective
4 purchaser wants to receive mailings from a tobacco company;

5 (2) makes a good faith effort to verify the
6 information contained in the certification provided by the
7 prospective purchaser under Subdivision (1) against a commercially
8 available database or obtains a photocopy or other image of a
9 government-issued identification bearing a photograph of the
10 prospective purchaser and stating the date of birth or age of the
11 prospective purchaser;

12 (3) sends to the prospective purchaser, by e-mail or
13 other means, a notice that complies with Section 161.454; and

14 (4) for an order made over the Internet or as a result
15 of an advertisement, receives payment for the delivery sale from
16 the prospective purchaser by a credit or debit card that has been
17 issued in the purchaser's name or by check.

18 SECTION 15. Section 161.455, Health and Safety Code, is
19 repealed.

20 SECTION 16. (a) The changes in law made by this Act to
21 Subchapters H, N, and R, Chapter 161, Health and Safety Code, apply
22 only to an offense committed on or after the effective date of this
23 Act. For purposes of this section, an offense is committed before
24 the effective date of this Act if any element of the offense occurs
25 before that date.

26 (b) An offense committed before the effective date of this
27 Act is covered by the law in effect when the offense was committed,

1 and the former law is continued in effect for that purpose.

2 SECTION 17. This Act takes effect September 1, 2017.